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| APPLICATION NO. | FILING DATE | FIRST NAMED INVENTOR | ATTORNEY DOCKET NO. |
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09/469,530 12/22/99 DAMPEIROU

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020311 HM22/0718
BIERMAN MUSERLIAN AND LUCAS
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NEW YORK NY 10016

EXAMINER

BERMAN, A

ART UNIT

PAPER NUMBER

1619

DATE MAILED:

07/18/01

Please find below and/or attached an Office communication concerning this application or proceeding.

Commissioner of Patents and Trad marks

Office Action Summary

Application No.

09/469,530

Applicant(s)

DAMPEIROU ET AL.

Examiner

Alysia Berman

Art Unit

1619

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 01 June 2001.
- 2a) ☒ This action is FINAL. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 20-36 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 20-36 is/are rejected.
- 7) ☒ Claim(s) 23 and 27 is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☒ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on _____ is: a) ☐ approved b) ☐ disapproved by the Examiner.
- If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. §§ 119 and 120

- 13) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☒ None of:
1. ☒ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
- a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

Attachment(s)

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449) Paper No(s) _____
- 4) ☐ Interview Summary (PTO-413) Paper No(s). _____
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other:

DETAILED ACTION

1. Receipt is acknowledged of the amendment filed June 1, 2001. Claims 1-19 have been canceled. Claims 20-36 have been added and are pending. The independent claim, claim 20, is interpreted as requiring an item of clothing with an adhesive fabric attached thereto, wherein the adhesive fabric comprises a composition containing a thickening agent, an extract of either *Kigelia africana* or *Kigelia pinnata* and at least one additional plant extract selected from the group consisting of *Trifolium pratense*, *Humulus lupulus*, *Alchemilla mollis*, *Salvia sciaria* and *Glycyrrhiza glabra*.

Specification

2. The disclosure is objected to because of the following informalities: several of the percent ranges in the specification appear to contain fractions but are written with a comma instead of a decimal point. Applicant is requested to thoroughly review the specification for any typographical errors and make appropriate corrections.

Appropriate correction is required.

Claim Rejections - 35 USC § 112

3. The following is a quotation of the first paragraph of 35 U.S.C. 112:

The specification shall contain a written description of the invention, and of the manner and process of making and using it, in such full, clear, concise, and exact terms as to enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to make and use the same and shall set forth the best mode contemplated by the inventor of carrying out his invention.

4. Claims 32 and 34 are rejected under 35 U.S.C. 112, first paragraph, because the specification, while being enabling for a dosage range of 3 to 85% of phytohormonal extracts and a dosage range of 10 to 40% by weight of a thickening agent, respectively, does not reasonably provide enablement for 3 to 85% by weight of plant extracts and 0.75 to 40% by weight of thickening agent, respectively. The specification does not enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to make and use the invention commensurate in scope with these claims. This rejection as it applied to original claims 15 and 17 is maintained for reasons of record in paper no. 8. According to the disclosure at page 3, 3rd paragraph, the specification is enabled for either 2.4 to 48% plant extracts, excluding the extract of *Kigelia*, or 7.4 to 73% plant extracts including the extract of *Kigelia*. At page 4, last paragraph, the specification discloses a dosage range of phytohormonal extracts from 3 to 85% without any units of measurement and a dosage of thickening agent from 10 to 40% by weight. These are dosage ranges not concentration ranges. The specification is not enabling for the weight percent concentration ranges instantly claimed.

5. Claims 32, 33 and 36 are rejected under 35 U.S.C. 112, first paragraph, as containing subject matter which was not described in the specification in such a way as to reasonably convey to one skilled in the relevant art that the inventor(s), at the time the application was filed, had possession of the claimed invention. The claims recite percent ranges based on weight. The specification does not provide any units of measurement for these percent ranges. The specification does not provide adequate written description of the percent ranges of components based on weight.

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6. Claims 20-36 are rejected under 35 U.S.C. 112, first paragraph, as containing subject matter which was not described in the specification in such a way as to reasonably convey to one skilled in the relevant art that the inventor(s), at the time the application was filed, had possession of the claimed invention. The specification does not contain any mention of the scientific names of the plants. Insertion of the scientific names, including genus and species, into the specification would overcome this rejection.

7. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

8. Claims 20-36 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

9. Claim 20 recites the limitation "the active ingredients" in line 3. There is insufficient antecedent basis for this limitation in the claim.

10. Claim 22 recites the limitation "the active elements" in line 4. There is insufficient antecedent basis for this limitation in the claim.

11. Claim 26 recites the limitation "the adhesive agent" in lines 1-2. There is insufficient antecedent basis for this limitation in the claim.

12. Claim 36 recites the limitation "the amount of isoflavones in the extract of Soya (Glycine max)" in lines 1-2. There is insufficient antecedent basis for this limitation in the claim.

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13. The term "high viscosity" in claim 20 is a relative term which renders the claim indefinite. The term "high viscosity" is not defined by the claim, the specification does not provide a standard for ascertaining the requisite degree, and one of ordinary skill in the art would not be reasonably apprised of the scope of the invention.

14. Claim 20 is vague and indefinite because it appears that the composition contains an item of ladies' clothing. However, it is unclear how a composition can contain clothing. This would be considered an article rather than a composition. Clarification is requested.

15. Claim 20 is vague and indefinite because it is unclear if the limitation *Kigelia pinnata* in parentheses is a required limitation of the claim or merely an optional component. Removal of the parentheses would overcome this rejection.

16. Claim 20 is indefinite because "*Alcaemilla*" and "*Slavia*" appear to be misspelled. It is believed that the correct spellings are "*Alchemilla*" and "*Salvia*". Correction is required.

17. Claim 20 is indefinite because "*Salvia sciara*" does not seem to exist. It is requested that Applicant review all of the scientific names of the plants to determine that they are correct.

18. Claim 20 is vague and indefinite because it is unclear what ladies' clothing encompasses. How does one determine ladies' clothing from some other clothing?

19. Claim 21 is indefinite because it is unclear how a composition containing ladies' clothing is contained in an adhesive porous dressing. Clarification is requested.

20. Claim 22 is indefinite because it recites a cotton tissue made of viscose and elastane. Viscose and elastane are synthetic polymers, not cotton.

21. Claim 22 is so confusing that the Examiner is unable to determine exactly what is required by the claim. It appears to be an improper Markush claim. Two examples of the proper format for a Markush group are "selected from the group consisting of A, B and C" or "wherein A is B or C." Does Applicant intend to claim an adhesive porous dressing containing all of the components listed in the claim or an adhesive porous dressing made of at least one of the components listed?

22. Claim 22 is indefinite because it is unclear what is encompassed by a "stocking-stitch casing," "an adhesive expanse" or "a veil of polypropylene." These are not recognized terms of art and the specification does not provide an explanation or definition of the terms.

23. Claim 26 is indefinite because it contains the abbreviation "PEG/PPG" in line 3. The first instance of all components of a composition should be completely written out followed by any abbreviations in parentheses for further use in subsequent claims.

24. This application is replete with 35 U.S.C. 112 issues. The above are just some examples. Applicant is required to review all of the claims for 35 U.S.C. 112 issues and make appropriate corrections.

Claim Objections

25. Claims 23 and 27 are objected to under 37 CFR 1.75(c), as being of improper dependent form for failing to further limit the subject matter of a previous claim.

Applicant is required to cancel the claim(s), or amend the claim(s) to place the claim(s) in proper dependent form, or rewrite the claim(s) in independent form. Claim 23 requires the limitation of an extract of red clover (*Trifolium pratense*), which is already required in claim 20. Claim 27 requires a thickening agent, which is already required in claim 20.

Response to Arguments

26. Applicant's arguments with respect to claims 1-19 have been considered but are moot in view of the new ground(s) of rejection.

Conclusion

27. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than **SIX MONTHS** from the date of this final action.

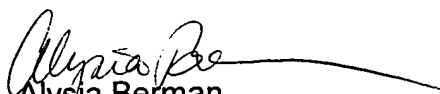
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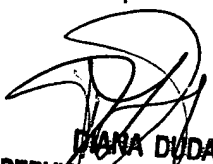
Correspondence

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Alysia Berman whose telephone number is 703-308-4638. The examiner can normally be reached on Monday through Friday from 8:30 to 4:00.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Diana Dudash can be reached on 703-308-2328. The fax phone numbers for the organization where this application or proceeding is assigned are 703-305-3592 or 703-305-4556.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is 703-308-1234 or 703-308-1235.


Alysia Berman
Patent Examiner
July 16, 2001


DIANA DUDASH
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